

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS AND
THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of)	
ARM 12.2.501 and 12.5.201 and the)	NOTICE OF AMENDMENT AND
adoption of New Rules I through V)	ADOPTION
regarding gray wolf management in)	
Montana)	

TO: All Concerned Persons

1. On June 26, 2008, the Department of Fish, Wildlife and Parks (department) and the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-346 on the proposed amendment and adoption of the above-stated rules at page 1252 of the 2008 Montana Administrative Register, Issue No. 12.

2. The department and commission have amended ARM 12.2.501 and 12.5.201 and NEW RULES I through V (12.9.1301 through 12.9.1305) to provide a date the rules will be applied. On July 18, 2008, the United States District Court for the District of Montana, Missoula Division, issued a preliminary injunction reinstating the Endangered Species Act protection for the northern Rocky Mountain gray wolf. *Defenders of Wildlife v. Hall*, No. CV-08-56-M-DVM (D. Mont. July 18, 2008) (order granting preliminary injunction). This means that the management of the wolf in Montana is presently under the jurisdiction of the United States Fish and Wildlife Service pursuant to the Endangered Species Act. It is therefore uncertain when the northern Rocky Mountain gray wolf population will be effectively delisted and under state management. The rules for state management adopted by the department and commission, including removing the wolf from the state endangered species list and designating the gray wolf as a state nongame species in need of management, are only needed and can only be applied when the wolf is no longer subject to federal jurisdiction under the federal Endangered Species Act. For these reasons, the department and commission added language that provides the adopted amendments and adopted new rules are applied when the wolf is no longer subject to the federal Endangered Species Act and the department and commission have sole jurisdiction over the management of the gray wolf in Montana.

3. The department and commission have amended the following rules as proposed, but with the following changes from the original proposal, stricken matter interlined, new matter underlined:

12.2.501 NONGAME WILDLIFE IN NEED OF MANAGEMENT (1) through (1)(g) remain as proposed.

(i) The amendment adding (1)(g) will be applied on the date the gray wolf in Montana is no longer subject to federal jurisdiction under the Endangered Species

Act, 16 U.S.C. 1531, et seq., and the department and commission have sole jurisdiction over the management of the gray wolf in Montana.

(2) remains as proposed.

AUTH: 87-1-201, 87-1-301, 87-5-105, 87-5-131, MCA

IMP: 87-1-201, 87-1-301, 87-5-105, 87-5-131, MCA

12.5.201 ENDANGERED SPECIES LIST (1) The following endangered species list is established in accordance with Title 87, chapter 5, MCA. Except as otherwise provided, it is unlawful for any person to take, possess, transport, export, sell or offer for sale, and for any common or contract carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on the following list:

(a) whooping crane (*grus americana*); ~~and~~

(b) Northern Rocky Mountain wolf (*canis lupus irremotus*); and

(i) Subsection (1)(b) will be applied until the date the gray wolf in Montana is no longer subject to federal jurisdiction under the Endangered Species Act, 16 U.S.C. 1531, et seq., and the department and commission have sole jurisdiction over the management of the gray wolf in Montana.

~~(b)(c)~~ black-footed ferret (*mustela nigripes*).

AUTH: 87-5-107, 87-5-131, MCA

IMP: 87-5-107, 87-5-131, MCA

4. The department and commission have adopted the following rules as proposed, but with the following changes from the original proposal, stricken matter interlined, new matter underlined:

NEW RULE I (12.9.1301) COMMITMENT TO PRESERVATION OF THE GRAY WOLF AS RESIDENT WILDLIFE IN NEED OF MANAGEMENT (1) The department has management authority of the gray wolf, a resident native wildlife species, and is dedicated to the conservation of wolf populations within the state of Montana. Pursuant to the definition of management under the Nongame and Endangered Species Conservation Act, 87-5-102, MCA, the department will implement conservation and management strategies to make sure that wolves continue to thrive and are integrated as a valuable part of Montana's wildlife heritage. The department will manage wolves to assure that recovery criteria are met or exceeded. Montana will ensure maintenance of at least 15 breeding pairs and assist natural dispersal and connectivity between gray wolf populations in Canada, Montana, Idaho, and Wyoming. The department uses an adaptive management framework for the gray wolf, meaning that if the statewide number of wolves exceeds 15 breeding pairs, the department may, as outlined in these rules, approve lethal control of wolves. If there are fewer than 15 breeding pair, the department will allow only conservative management of the wolf populations so that the number of breeding pair does not go below 10 but may still approve lethal control. These rules set out the comprehensive structure governing control of the gray wolf so that all control actions fall within the department's adaptive

management considerations. The commission has authority, when the statewide number of wolves exceeds 15 breeding pairs, to adopt a hunting season with quotas for wolves and will exercise that authority as part of the adaptive management framework for the gray wolf. The department's management decisions will be guided by the principles of maintaining and enhancing Montana's contribution to the overall northern Rocky Mountain gray wolf population and the gray wolf's connectivity between contiguous populations in Canada, Idaho, Montana, and Wyoming.

(2) This rule will be applied on the date the gray wolf in Montana is no longer subject to federal jurisdiction under the Endangered Species Act, 16 U.S.C. 1531, et seq., and the department and commission have sole jurisdiction over the management of the gray wolf in Montana.

AUTH: 87-1-201, 87-1-301, ~~87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA~~

IMP: 87-1-201, 87-1-301, ~~87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA~~

NEW RULE II (12.9.1302) DEFINITIONS The following definitions apply to this subchapter:

(1) ~~"Adaptive management" means a model for wolf conservation and management strategies; changes in the number of packs determined through a monitoring program directs selection of more conservative or liberal management strategies; model incorporates resource objectives, monitoring protocols, evaluation of predicted outcomes, and a decision process.~~ means wolf conservation and management strategies that will maintain a recovered population and assure natural connectivity and genetic exchange among the wolf populations in Canada, Montana, Idaho, and Wyoming. It establishes resource objectives such as maintenance of a recovered population; it monitors progress towards meeting those objectives through wolf numbers, distribution, dispersal, genetic diversity, and consideration of disease; and it adjusts management decisions to meet these resource objectives. Adaptive management directs selection of more conservative or liberal management tools, accordingly. If wolf numbers, natural connectivity, or genetic exchange ever become conservation concerns, adaptive management allows the department a full range of tools to ensure a recovered and connected population, including more conservative lethal control, smaller regulated harvest quotas, and human assisted genetic exchange.

(2) "Agency" means the Department of Fish, Wildlife and Parks or another agency of the government authorized by the Department of Fish, Wildlife and Parks through an interagency cooperative agreement.

(3) ~~"Attacking or killing"~~ means the actual biting, wounding, or grasping, ~~or~~ killing of livestock or domestic dogs.

(4) remains as proposed.

(5) ~~"Confirms", "confirmed", or "confirmation" that a wolf killed the livestock"~~ means an incident where USDA Wildlife Services ~~conducts~~ determines through a

field investigation of dead or injured livestock, ~~at the request of the producer;~~
~~depredation is confirmed in cases where that~~ there is reasonable physical evidence
that ~~an~~ the animal was actually attacked and/or killed by a wolf. The primary
confirmation would ordinarily be the presence of bite marks and associated
subcutaneous hemorrhaging and tissue damage, indicating that the attack occurred
while the victim was alive, as opposed to simply feeding on an already dead animal.
Spacing between canine tooth punctures, feeding pattern on the carcass, fresh
tracks, scat, hairs rubbed off on fences or brush, and/or eye witness accounts of the
attack may help identify the specific species or individual responsible for the
depredation. Predation might also be confirmed in the absence of bite marks and
associated hemorrhaging (i.e., if much of the carcass has already been consumed
by the predator or scavengers) if there is other physical evidence to confirm
predation on the live animal. This might include blood spilled or sprayed at a nearby
attack site or other evidence of an attack or struggle. There may also be nearby
remains of other victims for which there is still sufficient evidence to confirm
predation, allowing reasonable inference of confirmed predation on the animal that
has been largely consumed.

(6) remains as proposed.

(7) "Intentional harassment" means the deliberate and preplanned
harassment of a wolf, ~~including~~ by less than lethal munitions, ~~such as~~ including but
not limited to, 12 gauge shot gun rubber bullets and bean bag shells, that are
designed to cause physical discomfort and temporary physical injury but not death.
Intentional harassment may also include other devices intended to make noise such
as 12 gauge shot gun cracker shells, RAGG boxes, propane cannons, or sirens.

(8) "Lethal control" means killing a wolf except for hunting or trapping by the
public as authorized by the commission as part of a regulated public harvest.

~~(8)~~ (9) "Livestock" means cattle, calf, hog, pig, horse, mule, sheep, lamb,
llama, goat, herding/ or guarding animals, rhea, emu, and ostrich, donkey, and
certain breeds of dogs commonly used for herding or guarding livestock.

(10) "Nonlethal control" means actions intended to decrease the risk of
conflict that does not injure or kill a wolf.

~~(9)~~ (11) "Opportunistic hazing in a noninjurious manner" means harassment,
without the conduct of prior purposeful actions, such as yelling and radio activated
noise makers, or use of firearms to scare or discourage a wolf in a way that does not
injure or kill the wolf.

(12) "Problem wolf" means a wolf that has been confirmed by the department
or USDA Wildlife Services to have attacked or been in the act of attacking livestock
within the past 45 days.

(10) remains as proposed but is renumbered (13).

~~(14)~~ (14) "USDA Wildlife Services" means the Wildlife Services Division of
the United States Department of Agriculture, Animal and Plant Health Inspection
Service.

(15) This rule will be applied on the date the gray wolf in Montana is no
longer subject to federal jurisdiction under the Endangered Species Act, 16 U.S.C.
1531, et seq., and the department and commission have sole jurisdiction over the
management of the gray wolf in Montana.

AUTH: 87-1-201, 87-1-301, ~~87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA~~

IMP: 87-1-201, 87-1-301, ~~87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA~~

NEW RULE III (12.9.1303) CONTROL METHODS OF THE GRAY WOLF INCLUDES NONLETHAL AND LETHAL MEANS (1) remains as proposed.

(2) The department may take control actions; pursuant to an interagency cooperative agreement, may authorize USDA Wildlife Services to undertake control actions; or pursuant to an interagency cooperative ~~future~~ agreement, may authorize the Department of Livestock to undertake control actions that are consistent with this rule and the Montana Gray Wolf Conservation and Management Plan. The department is responsible for any lethal control decision and ~~ultimately~~ ultimately for the status, conservation, and management of the gray wolf population as a state species in need of management, game animal, or a furbearer as guided by the Montana Gray Wolf Management Plan, administrative rules, and statutes.

(3) Control of the gray wolf by an agency or by an individual may includes nonlethal and lethal actions. The department shall address wolf conflicts on a case-by-case basis, connecting response to the conflict in both time and location to direct nonlethal and lethal actions to a wolf or wolves with the highest likelihood of having injured or killed the livestock.

(4) remains as proposed.

(5) Killing or harassing a wolf not in conformance with these rules is subject to criminal penalties pursuant to 87-1-102, 87-1-125, 87-5-106, and 87-5-111, MCA, as applicable.

(6) This rule will be applied on the date the gray wolf in Montana is no longer subject to federal jurisdiction under the Endangered Species Act, 16 U.S.C. 1531, et seq., and the department and commission have sole jurisdiction over the management of the gray wolf in Montana.

AUTH: 87-1-201, 87-1-301, ~~87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA~~

IMP: 87-1-201, 87-1-301, ~~87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA~~

NEW RULE IV (12.9.1304) ALLOWABLE NONLETHAL CONTROL OF THE GRAY WOLF (1) Control of the gray wolf includes a variety of nonlethal management activities intended to decrease risk of, prevent, or resolve a conflict without killing the wolf in question. Allowable nonlethal control activities include, but are not limited to:

(a) husbandry practices including, but not limited to, electric fencing, increased human presence, fladry, herding or guarding animals, night pens, shed

lambling, carcass removal, alternative pastures, amended pasture or grazing rotations, or supplemental feed;

(b) placement of a radio collar to facilitate increased monitoring of the pack;

(c) opportunistic hazing in a noninjurious manner; ~~and~~

(d) intentional harassment;

(e) department discouraging wolves from denning in a particular location;

(f) carcass removal or electric fencing of bone yards (e.g., localized livestock disposal sites which attract a variety of scavengers); and

(g) working with interested individual livestock owners and private landowners, watershed groups, interested groups, state and federal land managing agencies, USDA Wildlife Services, and the Montana Livestock Loss Reduction and Mitigation Board and its coordinator to provide technical assistance and to assist with selection and implementation of proactive nonlethal controls on both public and private lands when and where livestock are present, either seasonally or yearlong. Examples include: allotment management or annual operating plans; Wildlife Management Area or other state land grazing leases; and, predator deterrent programs offered through the United States Department of Agriculture Natural Resource and Conservation Service Environmental Quality Incentive Program.

(2) The department will also work with others to better understand the effectiveness of nonlethal activities to prevent or decrease the likelihood of wolf-livestock conflicts.

(3) This rule will be applied on the date the gray wolf in Montana is no longer subject to federal jurisdiction under the Endangered Species Act, 16 U.S.C. 1531, et seq., and the department and commission have sole jurisdiction over the management of the gray wolf in Montana.

AUTH: 87-1-201, 87-1-301, ~~87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA~~

IMP: 87-1-201, 87-1-301, ~~87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA~~

NEW RULE V (12.9.1305) ALLOWABLE LETHAL CONTROL OF THE GRAY WOLF (1) On a case-by-case basis, the department ~~may~~ allows authorize only the following lethal control of ~~the gray wolf~~ problem wolves:

(a) agency control by the department, USDA Wildlife Services, or the Department of Livestock pursuant to an interagency cooperative agreement and as part of a coordinated agency response;

(b) control by a livestock owner, immediate family members, or employees with a permit issued by the department under the conditions authorized and specified on the permit; and

~~(c) killing of a wolf that is attacking, killing, or threatening to kill a person or livestock; and~~

~~(d)~~(c) control to protect human safety.

(2) The department may authorize lethal control of a problem wolfes, after considering the number of breeding pairs within the state and other factors in these rules.

~~(3) Before authorizing lethal control of a gray wolf for livestock conflict:~~

~~(a) the department or USDA Wildlife Services shall conduct the following investigation:~~

(3) Before considering lethal control of a problem wolf for livestock conflict, the department or USDA Wildlife Services shall conduct the following investigation:

~~(i) A livestock owner may call the department or USDA Wildlife Services to conduct an investigation of injured or dead livestock.~~

~~(ii)(a) The department or USDA Wildlife Services will conduct a field investigation to determine if the death of the livestock was due to natural causes or a predator; and~~

~~(iii)(b) If a predator killed the livestock, the department or USDA Wildlife Services will examine the evidence at the scene to determine if a wolf was responsible.~~

~~(b)(4)~~ If the department or USDA Wildlife Services confirms that a wolf killed the livestock, the department seeks will consider input from USDA Wildlife Services and the livestock owner to and decide the best course of action. The department may authorize incremental lethal control for problem wolves for up to 45 days from the date of confirmation by USDA Wildlife Services, assessing each conflict on a case-by-case basis and after considering the following factors:

(i) through (vi) remain the same but are renumbered (a) through (f).

~~(vii)(g)~~ season; and

~~(viii)(h)~~ number of breeding pair within the state;

(i) effectiveness and prior use of nonlethal control; and

(j) verification that wolves are not intentionally baited or drawn to the area, wolves are routinely present, and that nonlethal tools are unlikely to prevent further incidents of injured or dead livestock.

~~(4)(5)~~ The department has the discretion to lethally remove a gray wolf if the department determines that the wolf is bold, food conditioned, habituated to humans or livestock, demonstrates abnormal behavior patterns or physical characteristics indicative of a wolf-dog hybrid or of captive origin, or if it poses an immediate or ongoing threat to human safety.

(5) remains as proposed but is renumbered (6).

~~(6)(7)~~ The department may kill or remove a sick, injured, or diseased wolf.

(8) To further conservation of the species, the department may capture and translocate a wolf or use other human assisted techniques.

~~(7)(9)~~ The department may authorize a livestock owner, immediate family members, or employees by a permit to take a problem wolf under the following circumstances and conditions as part of a coordinated agency response to confirmed livestock damage due to wolves:

(a) when the department or USDA Wildlife Services confirms that a wolf killed the livestock; ~~or and~~ when the department or USDA Wildlife Services confirms wolves are routinely present on the property or allotment and present a significant ongoing risk to livestock;

(b) and (c) remain as proposed.

(d) the permit may last for a maximum of 45 days from the date the department or USDA Wildlife Services confirms the wolf caused damage ~~or wolves are a significant risk to livestock~~;

(e) the permit expires when the total desired number of wolves are removed by the combined action of the department, USDA Wildlife Services, and individuals named on the permit, or at the end of the 45 days, whichever is first; ~~and~~

(f) within 24 hours, a person must report to the department killing or injuring a wolf under a permit;

(g) to preserve the physical evidence, the permittee shall leave the carcass of any wolf killed where it lay, and shall not disturb the area surrounding the carcass; and

(h) surrender the carcass to the department.

(10) The permit must specify:

(a) its duration and expiration date;

(b) total number of wolves that may be lawfully killed through the combined actions of the individuals named on the permit and the department or USDA Wildlife Services;

(c) the geographic area where the permit is valid; and

(d) that wolves may be killed from the ground and in a manner that does not entail the use of intentional live or dead baits, scents, or attractants or deliberate use of traps or snares, or poisons; or use of radio telemetry equipment.

~~(8)~~(11) As allowed by 87-3-130, MCA, a person may kill a wolf that is attacking, killing, or threatening to kill a person or livestock, or that is in the act of attacking or killing a domestic dog. A person may not intentionally bait a wolf with domestic dogs or livestock for the purpose of killing the wolf.

(a) This person shall notify the department within 72 hours, preserve the scene, and leave the carcass where it was killed until the department or USDA Wildlife Services investigates the scene, and surrender the carcass to the department. USDA Wildlife Services will investigate and determine the cause of any injured or dead livestock.

(12) This rule will be applied on the date the gray wolf in Montana is no longer subject to federal jurisdiction under the Endangered Species Act, 16 U.S.C. 1531, et seq., and the department and commission have sole jurisdiction over the management of the gray wolf in Montana.

AUTH: 87-1-201, 87-1-301, ~~87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA~~

IMP: 87-1-201, 87-1-301, ~~87-5-101, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-106, 87-5-107, 87-5-108, 87-5-109, 87-5-110, 87-5-111, 87-5-112, 87-5-116, 87-5-121, 87-5-122, 87-5-131, 87-5-132, MCA~~

5. Three hearings were conducted and comments were received. The following comments were received and appear with the department's and commission's responses:

Comment 1: Many comments support the reclassification of the wolf as a species in need of management.

Response 1: The department and commission affirm the commitment to the maintenance of a secure, recovered wolf population and Montana's unique role in maintaining connectivity with other contiguous populations in Canada, Idaho, and Wyoming. The department and commission understand Montana's unique role in maintaining adequate number of wolves and encouraging connectivity to maintain adequate genetic diversity.

Comment 2: Several comments did not support delisting of the wolf from the federal Endangered Species Act, stating that the federal recovery criteria were too low, or otherwise pertained to federal decisions outside the scope of state rulemaking.

Response 2: The department and commission appreciate these comments and perspectives though they are outside the scope of the state's jurisdiction and this rulemaking.

Comment 3: Several comments indicated that the department and commission need to do more to assure connectivity and the ability of wolves to move about the landscape safely, to disperse to other areas, and form new packs. Related comments suggested the department and commission take genetic diversity into account more explicitly when making adaptive management decisions and in its monitoring efforts.

Response 3: The department and commission are aware of the department and commission's unique role in assuring, through adequate regulation of human caused mortality, that wolves can disperse and freely move about the landscape. Regulating human caused mortality adequately allows natural connectivity and genetic exchange among wolf packs within Montana and with wolf populations in Canada, Wyoming, and Idaho. The department and commission are also participating in several efforts to identify habitat linkages and corridors for a variety of species, including the gray wolf. The department collects a variety of data during its monitoring efforts, including DNA, to address questions about dispersal and connectivity. Efforts are ongoing and will continue into the future.

The department and commission have amended the language of NEW RULE I to make more explicit Montana's commitment to enhance and aid natural dispersal and connectivity among the wolf populations in northwest Montana, central Idaho, the Greater Yellowstone Area, and Canada. The definition of adoptive management in NEW RULE II (12.9.1302) (1) was amended to emphasize connectivity and dispersal as management goals.

Comment 4: The department and commission received several comments that certain definitions were vague or incomplete.

Response 4: The department and commission have revised the definitions to clarify or make the definitions more complete. Definitions for terms that were used

elsewhere in the rule, but had not been previously defined, have been added. The definitions are consistent with the federally-approved state wolf plan and final environmental impact statement or consistent with definitions in a common dictionary.

Comment 5: The department and commission received several comments that the Montana Department of Livestock should either be deleted from (2) and therefore not authorized to undertake control actions. Alternatively, if reference to Montana Department of Livestock was not stricken from the final rule, its role and responsibilities should be clearly identified within the final rule prior to its adoption.

Response 5: Language has been inserted to clarify that the department can establish an interagency cooperative agreement with the Montana Department of Livestock to undertake control actions that are consistent with this rule and the state's federally-approved wolf plan. The interagency agreement will dictate activities undertaken by the Montana Department of Livestock. The inserted language clarifies that the department and commission are responsible for the decisions about the status, conservation, and management of the gray wolf population as a state species in need of management, game animal, or fur bearer as guided by Montana's wolf plan, statutes, and rules. The department and commission recognize that the Montana Department of Livestock has an interest in how wolf-livestock conflicts are addressed through its relationship with USDA Wildlife Services.

Comment 6: Several comments indicated a better explanation of "connecting the response to the conflict in both time and location" in (3) is needed.

Response 6: Language to better describe that lethal control is intended to be directed toward a wolf or wolves with the highest likelihood of having already injured or killed livestock in a specific area has been added. Lethal control actions in particular should be implemented and carried out in such a way as to maximize the likelihood that the offending problem wolves are killed, as it seems individual wolves experiment and "learn" that livestock can be a food source and teach that behavior to other wolves. Killing problem wolves, when necessary and as opposed to indiscriminant killing of wolves far away from where the damage occurred, offers the greatest probability that depredations will stop. This approach is consistent with the department's and commission's approach when responding to mountain lion and black bear damage to private property. Nonlethal control is intended to decrease the risk of wolf caused livestock losses, though may not fully prevent wolf caused losses.

Comment 7: Several comments at the hearings addressed aspects of wolf biology and potential outcomes of management decisions, such as breeder loss, trophic cascades, and compensatory mortality.

Response 7: The department and commission acknowledge these comments and questions about wolf biology and the potential outcomes of management decisions.

The department's monitoring of individual packs, total wolf numbers, distribution, dispersal, diseases, connectivity, and other things through an adaptive management framework assures that lethal control or other management prescriptions will not jeopardize maintenance of adequate numbers of breeding pairs, connectivity, and genetic exchange. Additionally, the department is involved with various applied research and field projects aimed at decreasing uncertainty about wolf biology and the outcomes of management prescriptions.

Comment 8: A comment at a hearing expressed concern that the broad language of Montana's defense of property statute could be interpreted to mean that it would be legal to bait wolves with domestic dogs or livestock for the purposes of intentionally killing wolves lawfully under the statute.

Response 8: It is unlawful for a person to intentionally bait wolves with domestic dogs or livestock for the purposes of killing wolves as per the defense of property statute and NEW RULE V(9). The statute requires that all incidents in which wolves are injured or killed in defense of property be reported to the department and the department will investigate them. If an investigation determines that intentional baiting or unusual attractants were used with the intent of killing wolves, the department will seek prosecution.

Comment 9: Several comments supported inclusion of allowable nonlethal control.

Response 9: The department and commission appreciate the support.

Comment 10: Several comments suggested that nonlethal control strategies should be required prior to application of lethal control. Related comments suggested that the department and commission have not demonstrated a strong enough commitment to use of nonlethal control measures. A few other related comments suggested that department should work harder and put more effort into development and requiring "best management" practices of public land grazing permittees.

Response 10: The department and commission believe that an integrated approach to addressing wolf-livestock conflicts requires the combination of both nonlethal tools to decrease the risk of livestock loss and lethal tools when wolves repeatedly kill livestock. Many livestock owners already implement several nonlethal proactive tools. The department and commission do not have jurisdiction over lands managed by other state or federal agencies for livestock grazing but the department has been involved with several cooperative range rider projects and works directly with individual livestock owners, watershed groups, grazing associations, and land management agencies. The department has learned that a combination of strategies are required for livestock and wolves to share the Montana landscape. Tolerance of wildlife use of private lands, and by species that can injure or kill livestock, is critical to their long term conservation success. Therefore, the department and commission take a balanced, adaptive, and flexible approach to preventing and resolving wolf-livestock conflicts. The department and commission

have added additional language to NEW RULE IV to more specifically state the commitment to use and evaluate nonlethal methods of control.

Comment 11: Several comments suggested additional proactive nonlethal strategies that were not included in the list.

Response 11: Several additional nonlethal activities that could be considered have been added to NEW RULE IV. The list is not exhaustive, nor exclusive as new techniques are developed. A reference to the need to work with all other interested parties and in a variety of settings in which wolves and livestock could be in close proximity has also been added. Further, a reference was added that technical assistance will be provided to the Montana Livestock Loss Reduction and Mitigation Board and its coordinator to help with selection, implementation, and evaluation of proactive nonlethal tools.

Comment 12: Several comments suggested more effort into nonlethal control activities and less into lethal control activities on public lands.

Response 12: NEW RULE I states the department will implement conservation and management strategies to make sure that wolves continue to thrive. The department has supported and participated in a number of programs with proactive, nonlethal strategies aimed at preventing livestock loss on both public and private lands. Although nonlethal control methods are preferred on public land, the department's adaptive management plan approaches wolf-livestock conflicts within the context of an adaptive management framework that generally discerns between settings of public lands, primarily backcountry areas and near national parks, and areas of mixed land ownerships. The plan also recognized that livestock are considered private property and that conflicts needed to be addressed and resolved wherever they occur, using a combination of nonlethal and lethal control activities.

Approximately 65% of all lethal control occurs on private lands. The department and USDA Wildlife Services completed a summary of damage and damage management for the period 1987-2006 (Sime et al. 2007). The summary shows that the majority of livestock are confirmed as being injured or killed on private land in Montana. The majority of lethal control is carried out by both private citizens, as authorized by applicable state or federal regulations, and by USDA Wildlife Services, as authorized by the department.

Comment 13: Several comments supported the allowable lethal control, the need to address and resolve conflicts, and that lethal removal was an important tool. Comments also generally supported an incremental approach.

Response 13: The department and commission agree that lethal control of problem wolves has helped resolve wolf-livestock conflicts. Further, the department and commission believe that strategic, targeted removal of problem wolves should be carried out in combination with proactive, nonlethal efforts to decrease the risk that livestock would be injured or killed by wolves. Based on nineteen years of experience with wolf-livestock conflicts in Montana, the department and USDA

Wildlife Services concluded the combination will be required to maintain local public tolerance of wolves where the two overlap. (Sime et al. 2007)

Comment 14: Several questions and comments were received about how the department and commission establish wolf hunting quotas in light of lethal control to address wolf-livestock conflicts.

Response 14: The department considered and modeled previous data about wolf death, birth, immigration, and emigration from all causes prior to making a tentative recommendation of a hunting quota to the commission on June 12, 2008. The department took into account livestock-related lethal control and made a conservative recommendation to the commission. By managing future public harvest on a quota-based system, when the total number of breeding pairs is greater than 15, many safeguards are in place to prevent excessive total mortality. Population monitoring also includes efforts to monitor wolf numbers, distribution, dispersal, birth, death, disease, and other things pertinent to maintaining a recovered, "connected" wolf population. The department provided supporting information about the modeling exercise and safeguards against excessive mortality to the commission and the public previously.

Comment 15: Many comments were received specific to the hunting quotas and generally stated that the hunting quotas were either too high or that wolves should not be hunted at all. Many of these comments also registered a concern about lethal control in such a way that could have either applied to the wolf quota or the proposed ARM rules.

Response 15: Although these rules do not directly address quotas or wolf hunting, NEW RULE I establishes the department's commitment to the preservation of the gray wolf. Language was added to NEW RULE I stating the department will manage wolves to assure that recovery criteria are met or exceeded and the commission has authority to adopt a hunting season when the statewide number of breeding pair exceeds 15.

Comment 16: Several comments stated the rule proposal did not adequately explain the permit process and details related to that aspect of lethal control. One comment also suggested language that discouraged flagrant abuse of a kill permit.

Response 16: The department's experience is that private citizens in Montana have not abused the flexibility afforded to them under the federal regulations or the state's guidelines, as applicable, over the last several years. Nonetheless, additional clarifying language was added to NEW RULE V.

/s/ Steve Doherty
Steve Doherty
Chairman
Fish, Wildlife and Parks Commission

/s/ Martha Williams
Martha Williams
Rule Reviewer
Department of Fish, Wildlife and Parks

/s/ M. Jeff Hagener

M. Jeff Hagener

Director

Department of Fish, Wildlife and Parks

Secretary

Fish, Wildlife and Parks Commission

Certified to the Secretary of State September 29, 2008